

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GENLYTE THOMAS GROUP LLC,

Plaintiff/Counterclaim Defendant,
v.

ARCHITECTURAL LIGHTING SYSTEMS, a
division of ARCH LIGHTING GROUP,

Defendant/Counterclaimant.

Civil Action No. 05-CV-10945 WGY

**DEFENDANT’S MOTION TO STRIKE
THE DELCARATION OF THOMAS M. LEMONS**

Defendant, Arch Lighting Group, Inc. (“ALS”) hereby moves for an order striking the Declaration of Thomas M. Lemons as filed in connection with Plaintiff, Genlyte Thomas Group LLC’s (“Genlyte Thomas”) Opposition to Defendant’s Motion for Summary Judgment. ALS filed a Motion for Summary Judgment of Non-infringement on November 1, 2006. On November 15, 2006, Genlyte Thomas filed an Opposition. As support for its Opposition, Genlyte Thomas submitted an Expert Declaration of Thomas M. Lemons (“Lemons Declaration”). On November 7, 2006, prior to the filing of Genlyte Thomas’ Opposition, ALS had filed a Motion in Limine with respect to the experts identified by Genlyte Thomas, including Mr. Lemons. As set forth in the Motion in Limine, Genlyte Thomas failed to comply with the requirements of Fed. R. Civ. P. 26(a)(2) and Local Rule 26.4(a). For the reasons set forth in the Motion in Limine and accompanying memorandum, the appropriate sanction for Genlyte Thomas’ disregard of the rules is exclusion of the testimony of the experts, including Mr. Thomas, from any hearing, motion or trial in this matter. Fed. R. Civ. P. 37(c) Accordingly, the Expert Declaration of Thomas M. Lemons submitted with Genlyte Thomas’ Opposition should

be stricken and not considered by the Court.

Respectfully submitted,

Dated: November 22, 2006

s/ Brett N. Dorny
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on November 22, 2006.

s/ Brett N. Dorny
Brett N. Dorny

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PROPOSED ORDER

Upon due consideration, Defendant's Motion to Strike the Declaration of Thomas M. Lemons is hereby GRANTED. The Declaration of Thomas M. Lemons filed in opposition to Defendant's Motion for Summary Judgment of Non-Infringement is stricken. Genlyte Thomas is precluded from presenting the testimony of Thomas M. Lemons with respect to any trial, hearing or motion in this case.

SO ORDERED this ____ day of _____, 2006.

Honorable William G. Young
U.S. District Judge